

By: Callegari

H.B. No. 3168

A BILL TO BE ENTITLED

AN ACT

relating to the operation of state agencies

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. REPEAL OF LONGEVITY PAY AND IMPLEMENTATION OF MERIT PAY PROGRAM.

SECTION 1.1. Section 30.024(b), Education Code, is amended to read as follows:

(b) The governing board of the school may enter into an employment contract with any employee who provides, or supervises any employee who provides, direct and regular educational services to students or who provides other professional educational services. An employee employed under this subsection is not subject to Section 2252.901, Government Code. Each teacher shall be employed under a term contract as provided by Subchapter E, Chapter 21, or under a probationary contract as provided by Subchapter C, Chapter 21. An employee employed under a contract under this subsection:

(1) shall be paid in accordance with a salary structure adopted by the superintendent with the concurrence of the board that provides salaries, including assignment stipends, equal, on a daily-rate basis, to salaries, including assignment stipends, paid to employees employed in comparable positions by the Austin Independent School District;

(2) ~~[is not eligible for longevity pay under~~

1 ~~Subchapter D, Chapter 659, Government Code, and]~~ is not entitled to  
2 a paid day off from work on any national or state holiday;

3 (3) is eligible for sick leave accrual under the  
4 General Appropriations Act in each month in which at least one day  
5 of the month is included in the term of the employment contract and  
6 in any other month in which work is performed or paid leave is  
7 taken;

8 (4) may be permitted by the board to take paid time off  
9 from work during the term of the employment contract for personal  
10 reasons as designated by the board, but the paid time off may not  
11 exceed three days per contract term and may not be carried forward  
12 from one contract term to a subsequent contract term;

13 (5) may be permitted by the board to be paid the salary  
14 designated in the employment contract in 12 monthly installments;  
15 and

16 (6) shall work the hours established by the  
17 superintendent.

18 SECTION 1.2. Section 30.055(b), Education Code, is amended  
19 to read as follows:

20 (b) The governing board of the school may enter into an  
21 employment contract with any employee who provides, or supervises  
22 any employee who provides, direct and regular educational services  
23 to students or who provides other professional, educational  
24 services. An employee employed under this subsection is not  
25 subject to Section 2252.901, Government Code. Each teacher shall  
26 be employed under a term contract as provided by Subchapter E,  
27 Chapter 21, or under a probationary contract as provided by

1 Subchapter C, Chapter 21. An employee employed under a contract  
2 under this subsection:

3 (1) shall be paid in accordance with a salary  
4 structure adopted by the superintendent with the concurrence of the  
5 board that provides salaries, including assignment stipends,  
6 equal, on a daily-rate basis, to salaries, including assignment  
7 stipends, paid to employees employed in comparable positions by the  
8 Austin Independent School District;

9 (2) ~~[is not eligible for longevity pay under~~  
10 ~~Subchapter D, Chapter 659, Government Code, and]~~ is not entitled to  
11 a paid day off from work on any national or state holiday;

12 (3) is eligible for sick leave accrual under the  
13 General Appropriations Act in each month in which at least one day  
14 of the month is included in the term of the employment contract and  
15 in any other month in which work is performed or paid leave is  
16 taken;

17 (4) may be permitted by the board to use a maximum of  
18 four days per contract term of accrued sick leave for personal  
19 reasons as designated by the board but the number of sick leave days  
20 not used for personal reasons during a contract term may not be  
21 carried forward to a subsequent contract term for use as personal  
22 leave;

23 (5) shall be paid the salary designated in the  
24 employment contract in 12 monthly installments if the employee  
25 chooses to be paid in that manner;

26 (6) shall work the hours established by the  
27 superintendent; and

1           (7) in addition to the contract salary received during  
2 the employee's first year of employment with the school and for the  
3 purpose of reducing a vacancy in a position that is difficult to  
4 fill because of the specialized nature and the limited number of  
5 qualified applicants, may be paid a salary supplement, not to  
6 exceed any salary supplement paid by the Austin Independent School  
7 District to an employee employed in a comparable position.

8           SECTION 1.3. Section 51.969(a), Education Code, as added by  
9 Chapter 889 (H.B. 2426), Acts of the 80th Legislature, Regular  
10 Session, 2007, is amended to read as follows:

11           (a) The president of a medical and dental unit, as defined  
12 by Section 61.003, shall determine whether a nurse employed by the  
13 unit for patient care or clinical activities is a full-time  
14 employee for purposes of:

15           (1) employees group benefits under Chapter 1551 or  
16 1601, Insurance Code; and

17           (2) leave under Chapter 661 or 662, Government Code[+]

18           ~~[(3) longevity pay under Section 659.043, Government~~  
19 ~~Code].~~

20           SECTION 1.4. Section 57.48(k)(1), Education Code, is  
21 amended to read as follows:

22           (1) "Compensation" means base salary or wages,  
23 ~~[longevity pay,]~~ hazardous duty pay, benefit replacement pay, or an  
24 emolument provided in lieu of base salary or wages.

25           SECTION 1.5. Section 403.055(1)(1), Government Code, is  
26 amended to read as follows:

27           (1) "Compensation" means base salary or wages,

1 ~~[longevity pay,~~] hazardous duty pay, benefit replacement pay, or an  
2 emolument provided in lieu of base salary or wages.

3 SECTION 1.6. Section 659.003(a)(2), Government Code, is  
4 amended to read as follows:

5 (2) "Remuneration" includes salary, compensatory per  
6 diem, expense per diem, reimbursement for expenses, ~~[longevity~~  
7 ~~pay,~~] and fees.

8 SECTION 1.7. The heading to Subchapter D, Chapter 659,  
9 Government Code, is amended to read as follows:

10 SUBCHAPTER D. MERIT ~~[LONGEVITY]~~ PAY

11 SECTION 1.8. Section 659.042, Government Code, is amended  
12 to read as follows:

13 Sec. 659.042. EXCLUSIONS. The following are not entitled  
14 to merit ~~[longevity]~~ pay under this subchapter:

15 (1) a member of the legislature;

16 (2) an individual who holds a statewide office that is  
17 normally filled by vote of the people~~[, except as provided by~~  
18 ~~Section 659.0445]~~;

19 (3) an independent contractor or an employee of an  
20 independent contractor;

21 (4) a temporary employee;

22 (5) an officer or employee of a public junior college;

23 (6) an academic employee of a state institution of  
24 higher education; or

25 (7) a state employee who retired from state employment  
26 on or after June 1, 2011 ~~[2005]~~, and who receives an annuity based  
27 wholly or partly on service as a state officer or state employee in

1 a public retirement system, as defined by Section 802.001, that was  
2 credited to the state employee.

3 SECTION 1.9. Section 659.043, Government Code, is amended  
4 to read as follows:

5 Sec. 659.043. ELIGIBILITY [~~ENTITLEMENT~~]. [~~(a)~~] A state  
6 employee is eligible [~~entitled~~] to receive merit [~~longevity~~] pay in  
7 accordance with the merit pay policy adopted by the state agency  
8 employing the individual [~~to be included in the employee's monthly~~  
9 ~~compensation if the employee:~~

10 [~~(1) is a full-time state employee on the first~~  
11 ~~workday of the month;~~

12 [~~(2) is not on leave without pay on the first workday~~  
13 ~~of the month; and~~

14 [~~(3) has accrued at least two years of lifetime~~  
15 ~~service credit not later than the last day of the preceding month].~~

16 [~~(b) Notwithstanding Subsection (a)(2), an employee of the~~  
17 ~~Texas School for the Blind and Visually Impaired or the Texas School~~  
18 ~~for the Deaf who is otherwise eligible for longevity pay is entitled~~  
19 ~~to longevity pay for each month that the employee is in a full-time~~  
20 ~~paid status on the first workday for which the school has work~~  
21 ~~scheduled for the employee.]~~

22 SECTION 1.10. Section 659.044, Government Code, is amended  
23 to read as follows:

24 Sec. 659.044. AMOUNT APPROPRIATED FOR MERIT PAY;  
25 LIMITATIONS. (a) During a state fiscal year, a state agency may  
26 not be appropriated more than an amount equal to \$200 times the  
27 number of full-time employees authorized for the state agency by

1 the General Appropriations Act for merit pay under this subchapter.  
2 ~~[Except as provided by Subsections (e) and (f) and Section~~  
3 ~~659.0445, the monthly amount of longevity pay is \$20 for every two~~  
4 ~~years of lifetime service credit.]~~

5 (b) A state agency may not award more than 10 percent of the  
6 amount appropriated to the state agency for merit pay during the  
7 state fiscal year to a single employee. ~~[The amount increases when~~  
8 ~~the 4th, 6th, 8th, 10th, 12th, 14th, 16th, 18th, 20th, 22nd, 24th,~~  
9 ~~26th, 28th, 30th, 32nd, 34th, 36th, 38th, 40th, and 42nd years of~~  
10 ~~lifetime service credit are accrued.]~~

11 (c) The amount of merit pay that a state employee receives  
12 during a state fiscal year may not exceed 25 percent of the  
13 employee's base salary or wages ~~[An increase is effective beginning~~  
14 ~~with the month following the month in which the 4th, 6th, 8th, 10th,~~  
15 ~~12th, 14th, 16th, 18th, 20th, 22nd, 24th, 26th, 28th, 30th, 32nd,~~  
16 ~~34th, 36th, 38th, 40th, and 42nd years of lifetime service credit~~  
17 ~~are accrued].~~

18 ~~[(d) An employee may not receive from the state as longevity~~  
19 ~~pay more than the amount determined under Subsection (a) or (e), as~~  
20 ~~applicable, regardless of the number of positions the employee~~  
21 ~~holds or the number of hours the employee works each week.~~

22 ~~[(e) This subsection applies only to an employee of the~~  
23 ~~Texas Youth Commission who is receiving less than the maximum~~  
24 ~~amount of hazardous duty pay that the commission may pay to the~~  
25 ~~employee under Section 659.303. The employee's monthly amount of~~  
26 ~~longevity pay is the sum of:~~

27 ~~[(1) \$4 for each year of lifetime service credit,~~

1 ~~which may not include any period served in a hazardous duty~~  
2 ~~position; and~~

3 ~~[(2) the lesser of:~~

4 ~~[(A) \$4 for each year served in a hazardous duty~~  
5 ~~position; or~~

6 ~~[(B) the difference between:~~

7 ~~[(i) \$7 for each year served in a hazardous~~  
8 ~~duty position; and~~

9 ~~[(ii) the amount paid by the commission for~~  
10 ~~each year served in a hazardous duty position.~~

11 ~~[(f) A state employee who retired from state employment~~  
12 ~~before June 1, 2005, and who returned to state employment before~~  
13 ~~September 1, 2005, is entitled to receive longevity pay. The~~  
14 ~~monthly amount of longevity pay the employee is entitled to receive~~  
15 ~~equals the amount of longevity pay the employee was entitled to~~  
16 ~~receive immediately before September 1, 2005. A state employee who~~  
17 ~~retired from state employment before June 1, 2005, and who returns~~  
18 ~~to state employment on or after September 1, 2005, is not entitled~~  
19 ~~to receive longevity pay.]~~

20 SECTION 1.11. Section 659.045, Government Code, is amended  
21 to read as follows:

22 Sec. 659.045. CHANGE IN STATUS. If a state employee ceases  
23 being a full-time state employee after the first workday of a month  
24 but otherwise qualifies for merit ~~[longevity]~~ pay, the employee's  
25 compensation for the month may include merit ~~[includes full~~  
26 ~~longevity]~~ pay.

27 SECTION 1.12. Subchapter D, Chapter 659, Government Code,



1 is amended by adding Section 659.0451 to read as follows:

2 Sec. 659.0451. MERIT PAY POLICY REQUIRED. Each state  
3 agency shall adopt a policy governing the agency's distribution of  
4 merit pay. The policy must include guidelines for determining when  
5 an employee's job performance warrants the distribution of merit  
6 pay.

7 SECTION 1.13. Section 661.034(b), Government Code, is  
8 amended to read as follows:

9 (b) Under this section, rate of compensation:

10 (1) includes an emolument in lieu of base pay for which  
11 the state employee was eligible on the last day of employment; and

12 (2) does not include [~~longevity or~~] hazardous duty  
13 pay.

14 SECTION 1.14. Section 661.063(c), Government Code, is  
15 amended to read as follows:

16 (c) Under this section, rate of compensation:

17 (1) includes an emolument in lieu of base pay for which  
18 the state employee was eligible; and

19 (2) does not include [~~longevity or~~] hazardous duty  
20 pay.

21 SECTION 1.15. Section 661.067(b), Government Code, is  
22 amended to read as follows:

23 (b) A state employee who remains on the payroll of a state  
24 agency under this section:

25 (1) is entitled to continue to receive all  
26 compensation and benefits that the state employee was receiving on  
27 the employee's last day of duty, including paid holidays[7

1 ~~longevity pay,~~] and hazardous duty pay;

2 (2) is entitled to a general salary increase for state  
3 employees that takes effect before the employee's accrued vacation  
4 time is exhausted; and

5 (3) may not use sick leave or accrue sick leave or  
6 vacation time.

7 SECTION 1.16. Section 661.904(b), Government Code, is  
8 amended to read as follows:

9 (b) The employee on an unpaid leave of absence during  
10 military duty described by Subsection (a) continues to accrue:

11 (1) [~~state service credit for purposes of longevity~~  
12 ~~pay,~~

13 [~~(2)~~] vacation leave; and

14 (2) [~~(3)~~] sick leave.

15 SECTION 1.17. Section 661.909(f), Government Code, is  
16 amended to read as follows:

17 (f) Except for an employee who returns to state employment  
18 from military leave without pay under Section 661.904, a full  
19 calendar month during which an employee is on leave without pay is  
20 not counted in computing:

21 (1) [~~total state service for purposes related to~~  
22 ~~longevity pay or to~~] the rate of accrual of vacation leave; or

23 (2) continuous state service for purposes related to  
24 merit salary provisions or vacation leave.

25 SECTION 1.18. Section 666.001(1), Government Code, is  
26 amended to read as follows:

27 (1) "Compensation" includes:

- 1 (A) base salary or wages;
- 2 (B) [~~longevity or~~] hazardous duty pay;
- 3 (C) benefit replacement pay;
- 4 (D) a payment for the balance of vacation and
- 5 sick leave under Subchapter B, Chapter 661;
- 6 (E) a payment for the accrued balance of vacation
- 7 time under Subchapter C, Chapter 661; and
- 8 (F) an emolument provided in lieu of base salary
- 9 or wages.

10 SECTION 1.19. Section 811.001(7), Government Code, is  
11 amended to read as follows:

12 (7) "Compensation" means the base salary of a person;  
13 amounts that would otherwise qualify as compensation but are not  
14 received directly by a person pursuant to a good faith, voluntary,  
15 written salary reduction agreement in order to finance payments to  
16 a deferred compensation or tax sheltered annuity program  
17 specifically authorized by state law or to finance benefit options  
18 under a cafeteria plan qualifying under Section 125 of the Internal  
19 Revenue Code of 1986 (26 U.S.C. Section 125); [~~longevity and~~]  
20 hazardous duty pay; nonmonetary compensation, the value of which is  
21 determined by the retirement system; amounts by which a person's  
22 salary is reduced under a salary reduction agreement authorized by  
23 Chapter 610; and the benefit replacement pay a person earns under  
24 Subchapter H, Chapter 659, [~~as added by Chapter 417, Acts of the~~  
25 ~~74th Legislature, 1995,~~] except for the benefit replacement pay a  
26 person earns as a result of a payment made under Subchapter B, C, or  
27 D, Chapter 661. The term excludes overtime pay and a cleaning or

1 clothing allowance.

2 SECTION 1.20. Section 814.203(c), Government Code, is  
3 amended to read as follows:

4 (c) For the purposes of this section, "comparable pay" means  
5 80 percent or more of the member's final state employment base pay  
6 before deductions for taxes or deferred compensation under state  
7 and federal law, including any [~~longevity or~~] hazardous duty pay,  
8 but excluding the monetary value of any insurance or retirement  
9 benefits. Comparable pay may be adjusted by the retirement system  
10 to account for adjustments in state pay rates.

11 SECTION 1.21. Section 301.355(a), Occupations Code, is  
12 amended to read as follows:

13 (a) The president of a medical and dental unit, as defined  
14 by Section 61.003, Education Code, shall determine whether a nurse  
15 who is employed by the unit for practice in patient care or in  
16 clinical activities is a full-time employee for purposes of:

17 (1) employees group benefits under Chapter 1551 or  
18 1601, Insurance Code; and

19 (2) leave under Chapter 661 or 662, Government Code[+  
20 ~~and~~

21 [~~(3) longevity pay under Section 659.043, Government~~  
22 ~~Code~~].

23 SECTION 1.22. The following sections of the Government Code  
24 are repealed:

25 (1) Section 659.041(1);

26 (2) Section 659.0411;

27 (3) Section 659.0445; and

1 (4) Section 659.046.

2 SECTION 1.23. The change in law made by this Article applies  
3 beginning with the first full pay period that begins on or after  
4 September 1, 2011.

5 ARTICLE 2. STATE PERSONNEL AND HUMAN RESOURCES

6 SECTION 2.1. Section 2056.0021, Government Code, is amended  
7 to read as follows:

8 Sec. 2056.0021. WORKFORCE PLANNING. (a) As part of the  
9 strategic plan required under Section 2056.002, a state agency  
10 shall conduct a strategic staffing analysis and develop a workforce  
11 plan, according to guidelines developed by the state auditor, to  
12 address critical staffing and training needs of the agency,  
13 including the need for experienced employees to impart knowledge to  
14 their potential successors.

15 (b) A workforce plan required by this section must include:

16 (1) the training and education rules adopted by the  
17 state agency under Section 656.048; and

18 (2) a detailed list of the state agency's managerial  
19 training requirements, including the minimum hourly requirements  
20 for annual or biennial managerial training.

21 (c) The state auditor shall analyze the workforce plans  
22 submitted by state agencies in accordance with this section and use  
23 information gathered from the analysis to:

24 (1) identify state agencies that would benefit from  
25 workforce planning assistance; and

26 (2) provide targeted evaluative and corrective  
27 information to the identified state agencies to help the agencies:

1           (A) identify their core competencies and match  
2 staff knowledge, skills, and abilities with those competencies;

3           (B) decide whether to maintain or develop the  
4 ability to perform a function or contract with another entity to  
5 perform the function;

6           (C) use information technology capabilities to  
7 record and organize the knowledge and job skills of current and  
8 retiring employees; and

9           (D) use recruiting, training, and rewarding  
10 programs to obtain qualified employees, improve agency management  
11 and employee productivity, and provide reward incentives for  
12 capable employees.

13           (d) In addition to providing targeted information under  
14 Subsection (c), the state auditor shall, on request, provide  
15 training and technical assistance to any state agency to help the  
16 agency develop and improve a workforce plan required by this  
17 section.

18           SECTION 2.2. Section 670.002, Government Code, is amended  
19 to read as follows:

20           Sec. 670.002. HUMAN RESOURCES STAFFING FOR LARGE STATE  
21 AGENCIES. A state agency with 500 or more full-time equivalent  
22 employees shall adjust the agency's human resources staff to  
23 achieve a human resources employee-to-staff ratio of not more than  
24 one human resources employee for every 100 [~~85~~] staff members.

25           SECTION 2.3. The heading to Section 670.003, Government  
26 Code, is amended to read as follows:

27           Sec. 670.003. HUMAN RESOURCES STAFFING FOR [~~MEDIUM-SIZED~~

1 ~~AND]~~ SMALL STATE AGENCIES; OUTSOURCING.

2 SECTION 2.4. Section 670.003(a), Government Code, is  
3 amended to read as follows:

4 (a) The State Council on Competitive Government shall  
5 determine the cost-effectiveness of consolidating the human  
6 resources functions of or contracting with private entities to  
7 perform the human resources functions of state agencies that employ  
8 100 or fewer [~~than 500~~] full-time equivalent employees.

9 SECTION 2.5. Chapter 670, Government Code, is amended by  
10 adding Section 670.004 to read as follows:

11 Sec. 670.004. HUMAN RESOURCES STAFFING FOR MEDIUM-SIZED  
12 STATE AGENCIES; OUTSOURCING. A state agency with fewer than 500  
13 full-time equivalent employees but more than 100 full-time  
14 equivalent employees shall:

15 (1) adjust the agency's human resources staff to  
16 achieve a human resources employee-to-staff ratio of not more than  
17 one human resources employee for every 100 staff members; or

18 (2) contract with a private entity to perform the  
19 human resources functions of the agency, if the State Council on  
20 Competitive Government determines that the agency's contracting  
21 with a private entity is cost-effective.

22 SECTION 2.6. Subtitle B, Title 6, Government Code, is  
23 amended by adding Chapter 673 to read as follows:

24 CHAPTER 673. MANAGEMENT PERFORMANCE PROGRAM

25 Sec. 673.001. DEFINITION. In this chapter, "state agency"  
26 means an agency in the executive branch of state government.

27 Sec. 673.002. UPPER MANAGEMENT PERFORMANCE AGREEMENTS. (a)

1 The governing body of a state agency shall develop and enter into  
2 agreements with employees of the agency who serve in upper  
3 management positions, including the chief executive or chief  
4 administrator of the agency.

5 (b) An agreement under this section shall:

6 (1) communicate to the upper management employee the  
7 agency's overall organizational goals and specific strategic aims;

8 (2) identify the specific performance measures and  
9 targets applicable to the unique programs for which the upper  
10 management employee is responsible; and

11 (3) explain the procedures that will be used by the  
12 agency to hold the upper management employee accountable for  
13 performance under the agreement, including annual performance  
14 review procedures.

15 SECTION 2.7. Subchapter F, Chapter 201, Transportation  
16 Code, is amended by adding Sections 201.407 and 201.408 to read as  
17 follows:

18 Sec. 201.407. ALLOCATION OF EMPLOYEES. (a) The department  
19 shall examine the department's core business and administrative  
20 units and develop a plan to streamline the department's operation  
21 by:

22 (1) transferring employees in engineering,  
23 technician, and engineering assistant positions from the statewide  
24 headquarters office to district offices;

25 (2) transferring employees in support positions from  
26 the division offices to the state headquarters office; and

27 (3) increasing the department's staff-to-manager



1 ratio.

2 (b) In conducting the examination under Subsection (a), the  
3 department shall focus primarily on the following units:

4 (1) bridge and roadway design;

5 (2) construction;

6 (3) environmental affairs;

7 (4) maintenance; and

8 (5) transportation planning and programming.

9 (c) The department shall present the plan required by this  
10 section to the 83rd Legislature and shall begin the transfer of  
11 personnel as required by this section not later than August 31,  
12 2013. This section expires September 1, 2013.

13 Sec. 201.408. LIMITATION ON CERTAIN EMPLOYEES. The  
14 department may not employ more than one employee who performs  
15 duties relating to human resources per 100 department employees.

16 ARTICLE 3. REPEAL OF THE LIMITATION ON STATE AGENCY PURCHASES OF  
17 FILING CABINETS AND PAPER SUPPLIES.

18 SECTION 3.1. Section 2051.021, Government Code, is  
19 repealed.

20 ARTICLE 4. STATE VEHICLE FLEET MANAGEMENT

21 SECTION 4.1. Subchapter C, Chapter 2171, Government Code,  
22 is amended by adding Section 2171.1011 to read as follows:

23 Sec. 2171.1011. CENTRALIZED FLEET MANAGEMENT. (a) The  
24 comptroller shall devise and implement a statewide system of state  
25 agency vehicle fleet management, including the following  
26 functions:

27 (1) vehicle acquisition and maintenance and repair

1 activities, including preventive maintenance;

2 (2) fueling operations;

3 (3) management of inventory and the use, collection,  
4 and reporting of data; and

5 (4) disposal or sale of excess inventory.

6 (b) The comptroller may negotiate a contract with a private  
7 fleet management provider:

8 (1) to operate one or all of the fleet management  
9 functions of the agency; or

10 (2) for fleet management data software and services,  
11 if the provider can demonstrate expertise necessary to perform the  
12 functions required by Subsection (a).

13 SECTION 4.2. The following sections of the Government Code  
14 are repealed:

15 (1) Section 2171.101;

16 (2) Section 2171.102;

17 (3) Section 2171.104;

18 (4) Section 2171.1045; and

19 (5) Section 2171.105.

20 ARTICLE 5. EFFECTIVE DATE.

21 SECTION 5.1. This Act takes effect September 1, 2011.